LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Twenty-Third Annual Report
April 1, 2013 to March 31, 2014

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OF
NOVA SCOTIA

TWENTY-THIRD ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2013-2014:

Darlene Jamieson, Q.C., President
Professor Robert J. Currie, Vice-President
Justice Kevin Coady
Dr. Brian R. Joseph
D. Peter Mancini
Dr. John L. McMullan (until May 2013)
Richard J. Melanson

The Commission staff in 2013-2014:

Angus Gibbon
Executive Director

Ilana Luther
Legal Research Counsel

Andrea Davidson
Administrative Assistant

William H. Charles, Q.C.
Special Counsel

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The work of the Law Reform Commission of Nova Scotia for the fiscal year April 1, 2013-March 31, 2014 was funded by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Commission gratefully acknowledges this financial support.

Contents

The Commission 4
The Year in Review 2013-2014 5
Work Program and Publications 5
Enforcement of Civil Judgments 5
Powers of Attorney Act 6
Matrimonial Property Act 7
Intestate Succession Act 7
Funding & Finances 8
Commissioners and Staff 2013-2014 8
Appendix - Audited Financial Statements for 2013-2014 11

THE COMMISSION

The Law Reform Commission of Nova Scotia was created in 1991, pursuant to the *Law Reform Commission Act*. The Commission reviews Nova Scotia's laws and makes recommendations for their improvement, modernization and reform.

The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia.

The Commission is funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law, legal education, and the administration of justice, receives its funds from the interest on lawyers' trust accounts.

The Commissioners are appointed from different sectors of the community, including: (a) a judge of a court of the Province; (b) two members of the Nova Scotia Barristers' Society; (c) a member of the faculty of the Schulich School of Law, Dalhousie University; and (d) up to three other persons appointed by the provincial government. At least one of the Commissioners must not be a graduate in law.

The Commission employs a full-time staff of three: the Executive Director, Legal Research Counsel, and an Administrative Assistant. As well, the Commission continues to benefit from the contributions of Professor William H. Charles, Q.C., as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all Commission projects during the past year.

The Commission has published 50 project papers and reports, and 22 annual reports. All publications are available on the Commission's website.

Since it began operation in 1991, many of the Commission's recommendations have been adopted directly in new legislation or improvements to existing statutes. One of the Commission's first reports led to the creation of Nova Scotia's family maintenance enforcement program, under the *Maintenance Enforcement Act*. The Commission's reports on probate law and the law of wills resulted in a new *Probate Act* in 2000 and significant reforms to Nova Scotia's *Wills Act* in 2006. Its 2003 report on builders' liens resulted in the enactment of a new *Builders' Lien Act* in 2004. The Commission's recommendations in relation to mental health law formed the basis for many of the provisions of the *Involuntary Psychiatric Treatment Act* of 2005. A report on substitute decision-making for personal care decisions provided background for the *Personal Directives Act* of 2008. The Commission's 2006 report on vexatious litigants resulted in amendments to the *Judicature Act* in 2009, to deal with those who unduly strain the time and resources of Nova Scotia courts.

More recently, the Government of Nova Scotia has enacted regulations under the *Environment Act* in respect of contaminated sites, relying on the Commission's 2009 report on that topic. The regulations came into effect on July 6, 2013. In 2011, the provincial legislature passed legislation to abolish an antiquated and troublesome rule of law called the rule against perpetuities, following the Commission's 2010 report

recommending the abolition of that rule. In May of 2012 the legislature passed legislation to amend the *Maintenance and Custody Act*, expressly confirming the rights of grandparents to apply for access rights to grandchildren, following the Commission's 2007 recommendation to that effect. The Commission's most recent report, on the *Builders' Lien Act*, resulted in amendments to improve the process for paying out lien holdbacks. The legislation was passed in May of 2013.

THE YEAR IN REVIEW 2013-2014

Work Program and Publications

Enforcement of Civil Judgments

This project has its origins in the Commission's work in 2009 evaluating the Small Claims Court. In survey research, users of the Small Claims Court expressed general satisfaction with the workings of that court, but many were frustrated with the process for enforcing, or collecting on, judgments. The Attorney General asked the Commission to examine the issue of enforcement in the civil justice system at large.

The project includes a specific issue relating to the seizure of judgment debtors' wages. This issue first arose during the drafting of Nova Scotia's new *Civil Procedure Rules*, and was referred to the Commission for study by the Attorney General.

This is an important project involving both access to, and the effectiveness of, the justice system. The project responds to the need for more accessible judgment enforcement processes - a critical but sometimes overlooked component of access to justice. It is also concerned to avoid compounding the economic and social vulnerability of judgment debtors and their families.

The project examines the various statutes, regulations and rules that currently govern a disparate array of enforcement processes, with the aim of streamlining and simplifying the system. The project also considers modernization and enhancement of the powers of the Sheriff, to ensure the most effective recovery. Finally, the project aims to modernize Nova Scotia's provisions for exempting judgment debtors' assets and income from seizure, in order to ensure that debtors and their families are not deprived of the basic means to function as healthy and productive members of society.

The Commission published a Discussion Paper in December 2011. The paper proposed substantial adoption of the Uniform Law Conference of Canada's *Uniform Civil Enforcement of Money Judgments Act*. The Commission received a number of public submissions that were generally in favour of adopting the *Uniform Act*. Some, however, took issue with the *Uniform Act*'s provisions for exempting a portion of the debtor's income from seizure. The Commission undertook substantial further research and deliberation, and published a second Discussion Paper in February of 2013, specific to the issue of the income exemption.

During the 2013-2014 reporting period the Commission undertook significant research and deliberation on the basis of public comments in response to both Discussion Papers,

and prepared a draft Final Report, which will be published in the coming months. The Final Report will recommend the adoption of comprehensive, modern judgment enforcement legislation, based on the *Uniform Act*. It will include a simplified process for securing the defendant's property in advance of trial where appropriate, a streamlined process for registering judgments in order to bind the judgment debtor's property, and modern, comprehensive powers for seizing debtors' assets and income and distributing the proceeds. The Report will also recommend a series of exemptions from seizure, to protect debtors' interests in shelter, well-being and the means of earning a livelihood. Finally, the Report will recommend a system for exempting a portion of debtors' income which is more sensitive to debtors' individual circumstances, as well as effective provisions to protect exempt income once it has been deposited into the debtor's bank account.

Powers of Attorney Act

In March of 2010, the Minister of Justice asked the Commission to provide its general recommendations regarding the improvement and modernization of the Nova Scotia *Powers of Attorney Act*. The *Act* is significantly out of date, and its deficiencies have propelled recent litigation and piecemeal reform legislation. The legislation in other Canadian jurisdictions is far more modern and extensive, particularly with regard to the duties of the attorney and the protection of the donor.

The project provides an opportunity to strengthen Nova Scotia's laws for the protection of seniors and others who rely on substitute decision-makers, against financial abuse.

The Commission convened a project advisory group, including practitioners with expertise in estate planning and elder law, the CEO of the Nova Scotia Department of Seniors, an RCMP senior safety coordinator and the Nova Scotia Public Trustee. The group held a number of meetings in the Spring and Summer of 2012 with the aim of identifying issues and considering potential law reform solutions.

The Commission spent much of the 2013-2014 reporting period developing its preliminary proposals, which were published in a Discussion Paper in March of 2014. The Paper is the most extensive publication the Commission has ever released. Over the course of its 236 pages, the Paper makes approximately 150 proposals for legislative reform, as well as for significant public legal education programs to increase public knowledge of the benefits and risks of making a power of attorney, access to justice initiatives to prevent and respond to financial abuse using a power of attorney, and more effective enforcement by public authorities.

Along with the Discussion Paper the Commission also published a Response Booklet, intended for a general audience. The Response Booklet is designed to be user-friendly and accessible, and has been advertised and distributed widely across the province through public libraries, retirement communities, long-term care facilities, wellness centres, seniors centres, Access Nova Scotia locations, and through a number of community and advocacy groups representing constituencies with an interest in powers of attorney and financial abuse.

Matrimonial Property Act

In April of 2012, the Commission decided to review the Nova Scotia *Matrimonial Property Act*. It has been 30 years since the *Act* came into force, and it has not been substantially amended since then. Family law stakeholders, and in particular the practicing bar and academic commentators, have indicated that the *Act* is in need of reform in a number of areas. The *Act* affects a large number of Nova Scotians - family law litigation representing a substantial proportion of contested matters in Nova Scotia courts. A number of other jurisdictions have substantially reformed their matrimonial property legislation in recent years.

The Commission convened an advisory group, including members of the legal profession with experience in family law, the Schulich School of Law at Dalhousie University, the Nova Scotia Supreme Court (Family Division), and a Chartered Accountant who specializes in matrimonial property division. The group met through the Winter and early Spring of 2014. The Advisory Group's deliberations were facilitated by an issues Paper prepared by Commission staff, which examined various issues for reform, relevant social science evidence, case law, and the experience of other jurisdictions in Canada and beyond.

Intestate Succession Act

In December 2013 the Commission decided to review the *Intestate Succession Act*. The *Act* governs the distribution of property of a deceased person who has not made a valid will, as well as any property which is not dealt with by a will. The *Act* has significant access to justice implications because it determines the distribution of property for those who, for whatever reason, have not made a will.

The *Act* provides for a preferential share of the estate to go to the deceased's spouse, and the remainder to be divided between the spouse and descendants of the deceased.

The *Act* was first introduced in 1966, when the value of property was much lower, and ideas about inheritance focused more on inter-generational wealth transfers, as opposed to the material well-being of surviving spouses or common law partners. The *Act* was written at a time when multiple marriages and cohabitations, same sex marriages and cohabitations, "blended families" and artificially and posthumously conceived children, were much less prevalent than they are today.

Among other things, the Commission will examine whether the *Act* should include common law partners as spouses, and if so under what conditions. The value of the spouse's preferential share (currently $50,000, or the matrimonial home) is also a topic for study. The Commission will also look at the question of who should be considered an "issue" of the deceased. Currently step-children who were not adopted by the deceased are not included, nor are children to whom the deceased stood *in loco parentis*. As well, the *Act* does not deal with various other biological and social relationships of parentage that may be formed by the use of reproductive technologies.

Commission staff has begun preliminary research, for the purpose of preparing an issues paper that will provide the background for the deliberations of the Commission's advisory

group, which has yet to be convened.

Funding & Finances

The Commission's audited financial statements for the year ending 31 March 2014 are attached to this report as an Appendix.

During the reporting period, the Commission received operational funding in the amount of $106,744.00 from the Law Foundation of Nova Scotia, and $184,824.00 from the Government of Nova Scotia. The Commission is also credited with $5,518 in "Other Income". Most of this is interest income earned in prior years. In previous years accrued interest earned on GIC investments was not recorded year by year. That practice has been revised for the current year and going forward, and corresponding adjustments were made to the respective financial statement balances. Strictly accounting for expenses and income earned in 2013-2014, the Commission finished the year with a smaller-than expected deficit of $4,285, thanks to significant cost-cutting in the face of persistent reduced funding from both its major funders.

COMMISSIONERS AND STAFF 2013-2014

Commissioners

Darlene Jamieson Q.C., President
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society. Ms. Jamieson was appointed as President of the Commission in June of 2012.

Robert J. Currie, Vice-President
Professor Currie was appointed to the Commission by Order in Council in January 2010. He is an Associate Professor at the Schulich School of Law, Dalhousie University, and Director of Dalhousie's Law & Technology Institute. He is a specialist in the area of international and transnational criminal law, and is the author of numerous books, articles and comments in that field. In 2008, Professor Currie was awarded the Dalhousie Law Students' Society and Alumni Association Award for Excellence in Teaching. He has been a member of the Nova Scotia Bar since 2000.

Kevin Coady
Mr. Justice Coady was appointed to the Commission by Order in Council in December 2007. Justice Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with the law firm Coady Filliter and has taught criminal law at Dalhousie University.

Brian R. Joseph
Dr. Joseph was appointed to the Commission by Order in Council in April 2010. He is a

graduate of St. Francis Xavier University (B.Sc. and B.A. Hons), the University of Toronto (M.A.), and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

D. Peter Mancini
Mr. Mancini was appointed to the Commission by Order in Council in June 2011. He attended Dalhousie University where he earned a B.A. (Honours) degree, major in Political Science before entering Dalhousie Law School and earning a LLB. He has practiced with Nova Scotia Legal Aid for 25 years, taking two leaves of absence. He taught at Cape Breton University and was a Member of Parliament for the riding of Sydney Victoria. During that period he was a member of the standing committee on Justice and Human Rights. In 2001 he returned to Nova Scotia Legal Aid as a full time staff lawyer with a focus on criminal law. In 2010 he was named the Service Delivery Director for Nova Scotia Legal Aid and joined the executive branch of the organization. He has presented at criminal law conferences and family law conferences sponsored by the Nova Scotia Barristers' Society, Canadian Bar Association, and the Criminal Lawyers Association.

John L. McMullan (to May 2013)
Dr. McMullan was appointed to the Commission by Order in Council in February 2006. He is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

Richard J. Melanson
Mr. Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in September of 2012. He is a partner with the Halifax law firm of Blois, Nickerson & Bryson LLP. His areas of practice include administrative law, bankruptcy and insolvency, civil litigation, corporate & commercial, intellectual property and real estate. Mr. Melanson graduated from the Université Sainte-Anne with a Bachelor of Arts (Honours) in 1981, and a Bachelor of Education (Honours) in 1983. In 1988 he graduated from Dalhousie Law School as Gold Medalist. He is a member of the Board of Examiners of Nova Scotia Social Workers' Association and chair of the Discipline Committee, and has been a member of the Agreement on Internal Trade Working Group. He is a Director and current Treasurer of Canadian Parents for French - Nova Scotia.

Staff

Angus Gibbon
Executive Director
Mr. Gibbon joined the Commission as Legal Research Counsel in August 2009, and was appointed Executive Director in April of 2011. A graduate of Acadia University, he

received his law degree from the University of Toronto in 1999, and a Ph.D. from the University of Toronto in 2005. Mr. Gibbon was called to the Nova Scotia Bar in 2004 and was in general private practice before joining the Commission. He is on the part-time faculty of the Schulich School of Law at Dalhousie University.

Ilana Luther
Legal Research Counsel
Ms. Luther joined the Commission in June 2011. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, Ms. Luther received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. She has worked for legal aid both in Ontario and in Nova Scotia. She is currently a Doctoral candidate at the Schulich School of Law at Dalhousie University.

Andrea Davidson
Administrative Assistant
Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

APPENDIX - AUDITED FINANCIAL STATEMENTS FOR 2013-2014

Grant Thornton

Financial Statements

Law Reform Commission of Nova Scotia

March 31, 2014

Contents

	Page
Independent auditor's report	1-2
Statement of operations and changes in net assets	3
Statement of financial position	4
Statement of cash flows	5
Notes to the financial statements	6-7

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Independent auditor's report

To the Commissioners of
Law Reform Commission of Nova Scotia

We have audited the accompanying financial statements of Law Reform Commission of Nova Scotia (the "Commission"), which comprise the statement of financial position as at March 31, 2014, the statements of operations, changes in net assets and cash flows for the year then ended and a summary of significant accounting policies and other explanatory information.

Management's responsibility for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2014 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

Other matters

Without modifying our opinion, we draw attention to the fact that these are the Commission's first set of audited financial statements. We were not engaged to report on the comparative information, and as such, it is unaudited.

Halifax, Canada
June 30, 2014

Grant Thornton LLP
Chartered Accountants

Law Reform Commission of Nova Scotia
Statement of operations and changes in net assets

Year ended March 31	2014	2013 (Unaudited)
Revenue		
Department of Justice	$ 184,824	$ 184,824
Law Foundation of Nova Scotia	106,744	106,744
Other income	5,518	578
	297,086	292,144
Expenditures		
Bank fees	250	69
Commissioner's fees and expenses	3,367	4,489
Insurance	1,198	1,170
Library	2,098	2,109
Meetings	1,383	1,934
Miscellaneous	899	476
Office	7,094	5,997
Professional fees	1,612	1,933
Rent	24,000	31,492
Repairs and maintenance	1,279	1,646
Salaries and wages	247,263	241,653
Taxes	3,258	3,796
Utilities	3,202	4,686
	296,903	301,450
Excess (deficiency) of revenue over expenditures	$ 183	(9,306)
Net assets, beginning of year	$ 67,178	$ 76,484
Excess (deficiency) of revenues over expenditures	183	(9,306)
Net assets, end of year	$ 67,361	$ 67,178

See accompanying notes to the financial statements.

Law Reform Commission of Nova Scotia
Statement of financial position

March 31	2014	2013 (Unaudited)
Assets		
Current		
Cash	$ 64,137	$ 248,274
HST receivable	3,224	3,728
	$ 67,361	$ 252,002
Liabilities		
Current		
Deferred revenue	$ -	$ 184,824
Net assets		
Accumulated surplus	$ 67,361	$ 252,002

Commitment (Note 4)

On behalf of the Board

KEVIN COADY

_____ Commissioner

_____ Commissioner

See accompanying notes to the financial statements.

Law Reform Commission of Nova Scotia
Statement of cash flows

Year ended March 31	2014	2013 (Unaudited)
Increase (decrease) in cash and cash equivalents		
Operating		
Excess (deficiency) of revenue over expenditures	$ 183	$ (9,306)
Changes in non-cash working capital		
HST receivable	504	470
Deferred revenue	(184,824)	-
Net decrease in cash and cash equivalents	(188,606)	(8,836)
Cash and cash equivalents		
Beginning of year	248,274	257,110
End of year	$ 64,137	$ 248,274

See accompanying notes to the financial statements.

Law Reform Commission of Nova Scotia
Notes to the financial statements
March 31, 2014

1. Nature of operations

The Law Reform Commission of Nova Scotia (the "Commission") was created in 1991 by the Government of Nova Scotia. The law which created the Commission is the Law Reform Commission Act, S.N.S. 1990, c. 17. The Commission is an independent advisor to the Government and is not a government department. The independence of the Commission enables it to make recommendations for law reform in a non-partisan manner. The Commission is a registered not-for-profit organization and is therefore exempt from income tax per the Income Tax Act.

2. Summary of significant accounting policies

Basis of presentation
These financial statements have been prepared in accordance with Canadian accounting standards for not-for-profit organizations ("ASNPO").

Revenue recognition
The Commission follows the deferral method of accounting for revenue. Grants from the Provincial Department of Justice and the Law Foundation of Nova Scotia are recognized as revenue in the year which related expenditures are incurred. Revenue for interest are recorded on the accrual basis, once collectability is reasonably assured.

Deferred revenue
Deferred revenue consists of that portion of grants received but not yet earned.

Cash and cash equivalents
Cash and cash equivalents for the purpose of the statement of cash flows include cash on hand, balances with banks and short term investments.

Use of estimates
The preparation of the financial statements in conformity with ASNPO requires the Commission's management to make estimates and assumptions that affect the amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and reported amounts of revenue and expenditures during the year. Certain of these estimates require subjective judgments by management that may be uncertain. Actual results could differ from those reported.

Financial instruments
Initial measurement
The Commission's financial instruments are measured at fair value when issued or acquired.

Subsequent measurement
At each reporting date, the Commission measures its financial assets and liabilities at cost or amortized cost (less impairment in the case of financial assets), except for equities quoted in an active market, which must be measured at fair value. All changes in fair value of the Commission's investments in equities quoted in an active market and in bonds are recorded in the statement of operations. The Foundation uses the effective interest rate method to amortize any premiums, discounts, transaction fees and financing fees to the statement of operations. The financial instruments measured at amortized cost are cash and cash equivalents, HST receivable and deferred revenue.

3. Economic dependence

The Commission derives 98% of its revenue through grants from the Department of Justice and the Law Foundation of Nova Scotia.

4. Commitment

The Commission rents its premises under an operating lease which expires in August 2014. Monthly rent is $1,900.